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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,572	08/26/2003	Mark Clark Cesa	BP7969-01	4095

7590 12/07/2006

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EXAMINER

SACKEY, EBENEZER O

ART UNIT	PAPER NUMBER
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1624

DATE MAILED: 12/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding:

Office Action Summary

Application No.

10/648,572

Applicant(s)

CESA ET AL.

Examiner

EBENEZER SACKY

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 0825.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims 1-12 are pending.

Claim 13 has been cancelled. Claim 1 has been amended to specifically recite a limit of 0.3 milligrams of acetamide per liter of acetonitrile produced.

Claim Rejections - 35 USC § 112

The rejection of claims 1-12 under 35 U.S.C. 112 second paragraph, has been withdrawn.

Claim Rejections - 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-12 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Presson et al., (U.S. Patent number 4,362,603), Schaller et al., (German Patent number DD 259 530) and Campbell et al., (U.S. Patent number 3,313,726) in combination for the reasons set forth in the previous office action mailed on 04/03/06.

Response to Amendment/Remarks

Applicant's arguments filed 08/25/06 have been fully considered but they are not deemed persuasive. Applicants argue that the Presson et al., reference is directed to the continuous recovery of acetonitrile stream produced during ammoxidation of propylene to acrylonitrile, which is silent on the amount of acetamide present in the acetonitrile. Contrary to applicants' assertion, there is no comparative teaching in the specification to distinguish the purity of the Presson et al., acetonitrile from the instant acetonitrile and Presson et al., clearly teach that the purity of the acetonitrile produced is high (99+%), see column 1, lines 39-42, column 3, lines 28-30 and claim 1. Thus, the level of acetamide present in Presson et al., product may well be within the claimed range of 0.3 milligrams per liter of acetonitrile or less. None of the examples in the specification discloses purity anywhere close to the Presson et al., reference.

Applicants next argue that the Schaller et al., reference is directed to the purification of acetonitrile stream, which has been subjected to oxidative treatment, and thus, the primary objective of Schaller et al., process is to treat an acetonitrile stream

Art Unit: 1626

which has been pre-treated by oxidation. In response, this argument is irrelevant because the use of or reaction of oxygen, propylene and ammonia (ammoxidation) leading to the preparation of acetonitrile would of necessity involve oxidation hence, contrary to applicants assertion, the primary objective of Schaller et al., is not the treatment of acetonitrile product which has been *pre-treated*. Applicants further argue that the primary reason for the ultra-purification of the Schaller et al., product is to remove the oxidative impurities, which are present after the acetonitrile has been catalytically oxidized. This statement is clearly incorrect because Presson et al., and Schaller et al., teach similar *by-products* during the preparation of acetonitrile, see the abstract of Schaller et al., and column 2, lines 20-36 of Presson et al., and applicants have not argued that the products of Presson et al., and Schaller et al., are entirely dissimilar.

Finally, applicants argue that Campbell et al., teach the use of a resin treatment to remove impurities from adiponitrile and that acetonitrile and adiponitrile and two dissimilar products and further, the combination of Presson et al., and Campbell et al., is not proper. In response, Campbell clearly teaches that the use of anion exchange resins for chemical purification is well known in the art. Thus, in the absence of any data or evidentiary presentation to support the rejection made under 35 U.S.C. 103, the rejection of claims 1-12 will be maintained. Applicants should note that the same references i.e., Presson et al, Schaller et al., and Campbell et al., were applied previously in serial number 08/632,382 (child application) to the instant application and

Art Unit: 1626

the Board of Patent Appeals and Interference upheld the final rejection made in the said application.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to E. Sackey whose telephone number is (571) 272-0704. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane, can be reached on (571) 272-0699. The fax phone number for this Group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.


EOS

Application/Control Number: 10/648,572

Page 6

Art Unit: 1626

December 4, 2006

A handwritten signature in black ink, appearing to read "James O. Wilson", is written over the printed name.

James O. Wilson
Supervisory Patent Examiner
Art Unit 1624, Group 1600
Technology Center 1